

**STATE OF IOWA**  
**OFFICE OF THE TREASURER OF STATE**  
**REQUEST FOR PROPOSALS FOR**  
**UNCLAIMED PROPERTY AUDITING AND**  
**COLLECTION**

**October 16, 2012**



# Request for Proposal

## Table of Contents

### ARTICLE ONE: OVERVIEW

1.1	Intent and Background	4
1.2	Minimum Qualifications	4
1.3	Scope of Services	5
1.4	Timetable	9

### ARTICLE TWO: ADMINISTRATIVE INFORMATION

2.1	Inquiries	10
2.2	Iowa Statutes and Rules	10
2.3	Amendment to RFP, Amendment to Proposal, Withdrawal of Proposal	10
2.4	Costs of Preparing the Proposal	11
2.5	Rejection of Proposals	11
2.6	Disqualification	11
2.7	Nonmaterial and Material Variances	12
2.8	Reference Checks	12
2.9	Information from Other Sources	12
2.10	Verification of Proposal Contents	12
2.11	Criminal History and Background Investigation	12
2.12	Proposal Clarification Process	12
2.13	Disposition of Proposals	13
2.14	Public Records and Requests for Confidential Treatment	13
2.15	Reproduction of Proposals	14
2.16	Release of Claims	14
2.17	Evaluation of Proposals Submitted	14
2.18	Notice of Selection and Acceptance Period	14
2.19	Definition of Contract	14
2.20	Choice of Law and Forum	14
2.21	Restrictions on Gifts and Activities	15
2.22	No Minimum Guaranteed	15
2.23	Agreement Not Exclusive	15
2.24	Attachments and Appendices are Part of RFP	15
2.25	Transition for Existing Vendors	15

### ARTICLE THREE: PROPOSAL INFORMATION

3.1	Format	16
3.2	Submission of Proposal	16
3.3	Evaluation of Proposals	17

### ARTICLE FOUR: CONTRACT INFORMATION

4.1	Contract Terms and Conditions	19
4.2	Duration	20

### ARTICLE FIVE: QUESTIONNAIRE

5.1	Vendor Background	21
5.2	Experience	21
5.3	Personnel	22
5.4	Operations	22
5.5	Additional Questions	23
5.6	Pricing	24

Attachment 1	Bid Compliance and Certification Form	25
--------------	---------------------------------------	----

Attachment 2	Authorization to Release Information	26
Attachment 3	Certification regarding Debarment, Suspension, Eligibility, and Voluntary Exclusion Form	27
Appendix A	Unclaimed Property Auditing Services Agreement	28
Appendix B	Examination Protocols	50
Appendix C	Compensation Guidelines	52

# ARTICLE 1 OVERVIEW

## 1.1 Intent and Background

Iowa's unclaimed property program was established in 1967, through the enactment of Chapter 556 of the Code of Iowa, the Uniform Disposition of Unclaimed Property Act (the "Act"). The Act requires the reporting and delivery of unclaimed intangible personal property to the custody of the Office of the Treasurer of State Iowa ("TOS"). Unclaimed intangible personal property ("Property") includes, but is not limited to, bank accounts, insurance policy proceeds, securities, deposits, outstanding wages, accounts payable, checks, utility deposits, accounts receivables, stocks, bonds, mutual funds, dividends, oil and gas proceeds, gift cards/certificates, and credit balances, where the owner has failed to indicate an interest or otherwise claim the asset. All persons, firms, or entities holding property subject to the Act ("Holders") are required to report, regardless of where they are located.

Pursuant to the Act, the TOS is authorized to examine the records of any entity if the TOS has reason to believe that the entity has failed to report unclaimed property that should have been reported. Since 1985, the TOS has utilized auditing and collection agents to assist in securing compliance with the Act, particularly with respect to out-of-state Holders.

The TOS seeks to increase Holder compliance and broaden its Holder base by increasing enforcement of the reporting and remittance requirements of all types of unreported/underreported property subject to the Act.

The TOS currently has contracts with three companies to provide auditing and collections services. The TOS is releasing this Request for Proposal ("RFP") to determine if there are additional "Vendors" that meet the minimum qualifications that the TOS would like to enter into a contract with. It is possible that the TOS will not select any additional vendors at the conclusion of this process. Selected Vendor(s) will be expected to work closely with the TOS staff in coordinating the examination of, and collection from, Holders of unclaimed property subject to the Act.

## 1.2 Minimum Qualifications

### *Knowledge of unclaimed property laws*

Vendor must possess knowledge of unclaimed property laws and agree to comply with the Act and all federal legislation and court rulings regarding unclaimed property. The Vendor must maintain a full-time, licensed attorney on staff.

Vendor must possess previous demonstrable experience providing unclaimed property auditing services for other states.

"Demonstrable experience" shall include, but not be limited to, an established ability to competently and professionally manage multi-state unclaimed property compliance examinations on behalf of multiple state unclaimed property programs; timely compiling and collecting of findings, with minimal state intervention; identifying and resolving compliance issues in a collaborative manner with Holders; and securing the confidence and satisfaction of state client contacts.

### **1.3 Scope of Services**

#### ***Identification and Collection of Property***

Vendor shall undertake to identify and collect all types of Property from Holders that have never reported or have improperly reported to the State of Iowa, or otherwise have in their possession Property that is subject to the Act.

Although the TOS may, on occasion, request that the Vendor examine a particular Holder of unclaimed property, the Vendor shall be responsible for researching, identifying, and proposing audit candidates. In proposing audit candidates to the TOS for consideration, the Vendor shall adequately demonstrate the Vendor's reason to believe that the audit candidate is not in compliance with the Act. The Treasurer, in his sole discretion, shall determine whether an audit should be undertaken on behalf of the TOS, and no audit shall be conducted absent the written authorization of the TOS.

The Vendor shall identify and collect property in a *timely* manner. The TOS reserves the right not to compensate the Vendor if the Vendor delivers property to the TOS more than 18 months after the TOS authorized the audit.

Under this service, the Vendor shall:

- Identify Holders or potential Holders of property that is reportable to Iowa under the Act;
- Audit the records of Holders or potential Holders to identify with specificity the unclaimed property that should be reported and delivered to the state. Performance of the examination will be undertaken in a manner consistent with Iowa Administrative Code 781-910, 781-915 and Appendix B of this contract;
- Advise Holders that all property reported and remitted must conform to Iowa reporting requirements;
- Prepare and submit to the TOS reports of property in accordance with the requirements of the Act and any regulations hereunder;
- Direct Holders and their agents to deliver to the Vendor's custodian, property deemed owing under the Act;
- Cause the property to be forwarded to the TOS or the TOS designee; and
- Upon completion of the audit, advise the Holder that future reports of unclaimed property must be filed directly with the TOS.

#### ***Enforcement Efforts***

If a Holder refuses to report and deliver unclaimed property, the Vendor shall advise the TOS of the Holder's refusal within 30 days of the date the Vendor is advised by the Holder of such refusal.

If the Holder has failed to retain the names and addresses of owners with respect to property for which names and addresses are typically documented and retained, the Vendor shall apprise the Holder in writing of the requirement to record and prospectively maintain name and address information. The Vendor shall additionally, within 30 days of notifying a Holder of the requirement to record and prospectively maintain name and address information, notify the State of the Holder's failure to retain name and address information.

### ***Conflicts of Interest***

The Unclaimed Property Agent shall maintain independence in mental attitude in accordance with AICPA Professional Standards AU Section 220. The Vendor(s) should not only be independent in fact but should avoid situations that may lead others to doubt their independence.

### ***Vendor Reports and Accountability***

The Vendor shall provide the TOS a monthly Work in Progress report that identifies all audits in process, sets forth the FEIN of the Holder, and details the status of all work. The content and format of the Work In Progress report must substantially comply with TOS specifications. The Vendor shall also provide the TOS with such other status reports as are requested. Status reports will be submitted timely, in the format requested by the TOS.

The Vendor shall undergo a SSAE 16 (Type I and Type II) review by an independent auditing vendor within 24 months of the effective date of the contract. The Vendor shall provide the State with a copy of the report within 30 days of the report's issuance.

All records, data and other information obtained by the Vendor from Holders shall be deemed to constitute the property of the TOS. The Vendor agrees to produce any such records requested by the TOS.

The TOS reserves the right to review all records maintained by the Vendor to ensure the Vendor's compliance with all terms and conditions of the TOS contract with the Vendor. The Vendor shall maintain all records for a period of seven (7) years following termination of the contract with the TOS.

The Vendor shall properly document the audits that it performs on behalf of the TOS and make audit working papers available for review on the request of the TOS. Such working papers will include but not be limited to planning information, findings, calculations, analysis, and summarization.

The Vendor shall hold all information obtained in the course of an audit as confidential, and shall take affirmative steps to ensure that all employees and subcontractors take adequate steps to ensure the confidentiality of information.

The Vendor shall act in the best interest of the TOS.

### ***Holder Due Diligence & Subsequent Reporting***

The Vendor shall advise each Holder in writing of the provisions of the Act for notifying owners of their property.

Where it is subsequently established that the Holder failed to perform due diligence on property identified in an audit, the Vendor shall refund the TOS all fees paid by the TOS to the Vendor in conjunction with the audit, provided that the TOS did not, prior to the completion of the audit, waive due diligence requirements.

The Vendor, upon completion of the initial review or examination of a Holder's records, must instruct the Holder to file all future reports directly with the TOS.

### ***Unclaimed Property Report***

The Vendor shall provide reports of the property to be forwarded to the TOS in a format prescribed by the TOS. The TOS will provide reporting instructions, and specifications needed for electronic reporting.

Reports will include (if available) the following information, and such additional information as proscribed by administrative rule:

- Holder name
- Holder address
- a Holder contact, familiar with the records processed and the property transferred
- Federal Employer Identification number of the Holder
- owners/beneficiaries names
- owners/beneficiaries last known addresses
- owners/beneficiaries social security numbers or Federal Tax Identification numbers
- types of property
- any unique property identifier or number used by the Holder (for example, an account number or a birth date)
- amount of the property
- CUSIP number, and certificate numbers for any securities, if applicable
- bond numbers and coupon numbers accompanied with call date, if applicable
- value of the shares and the valuation date
- description of any securities, including maturity dates, interest rates, and interest or dividends due, if applicable
- date of the last transaction with the owner with respect to the property

### ***Custody of Property***

The Vendor shall enter into an agreement with a custodian to provide these services for the Vendor.

The custodian shall:

- Segregate into a separate account or accounts all property delivered by Holders.
- Acknowledge that the TOS has all rights of a third party beneficiary with respect to all funds due the state and maintained by the custodian on behalf of the Vendor.

The custodian is required to receive delivery of all property. In the event that the Vendor inadvertently received delivery of property, the Vendor shall forward the property to the custodian within 24 hours of the Vendor's receipt; however, property remittances of \$250,000 or more from a single owner must be transmitted directly to the TOS by the Holder, or if received by the Vendor or the Custodian, to the TOS within 24 hours of receipt.

The Vendor shall advise the Holder that the Holder is responsible for paying all claims up to the time that both a final report has been agreed to and the Holder has delivered the property to the Vendor.

Neither the Vendor nor its custodian, shall pledge, assign, hypothecate or otherwise encumber property without the prior written consent of the TOS, nor shall the Vendor take any ownership position in any securities constituting property.

The Vendor shall pay the TOS interest on any cash balances received and held by the Vendor or the Custodian for more than 45 days. Interest shall be calculated from the date of receipt, utilizing the 3 month Fed funds rate.

### ***Delivery of Property***

The Vendor shall reconcile the report with the Holder and deliver all property with the reconciled report to the TOS within 45 days from receipt of any property by the custodian.

Except for securities that are required to be certificated or are non-transferable, all securities must be electronically transferred directly from the Holder or the Holder's transfer agent, to a designated custodial account maintained by the TOS. Certificates for securities not eligible for book entry registration must be registered as instructed by the TOS. Those certificates that cannot be transferred must be delivered to the TOS in the nominee or original owner's name.

The original date that certificates are registered in the name of the TOS or the TOS nominee name, or credited in book entry form, must be retained, and must become a part of all reports relating to such certificates.

A complete delivery of property consists of the following:

- Unclaimed Property Report.
- Unclaimed Property Report remittance in the form of cash or securities (may contain stock certificates, mutual fund statements, dividend reinvestment statement, or a combination of each).
- A confirmation of each securities transaction either by a physical certificate, electronic transfer form or a statement indicating the transfer to the TOS.
- Summary of all stock or mutual funds delivered which include the name, the CUSIP and the total number of shares by issue.
- Each Holder delivery and invoice shall be separate and distinct, and not reported or comingled with deliveries for other Holders.

### ***Performance Review***

In accordance with Iowa Code Section 8.47, the Vendor shall, upon each anniversary date of the contract, undertake a self-assessment of the Vendor's services and performance and provide a copy of the review to the TOS. The review shall include, but not necessarily be limited to:

- The total amount of unclaimed property successfully collected by the Vendor.
- Audits commenced and audits completed during the review period.
- Assessment of the Vendor's financial stability and control environment.
- Services provided by the Vendor beyond those contractually required.
- Achievements made by the Vendor in encouraging and maintaining compliance.

If the Vendor's service and performance is found to be unsatisfactory the Treasurer may, in his sole discretion, terminate the contract.



#### **1.4 Timetable**

The following dates are set forth for informational and planning purposes; however, the TOS reserves the right to change the dates.

Issue RFP ó on or about October 16, 2012

Closing Date for Receipt of Bid Proposals ó October 26, 2012

If multiple Vendors are selected, TOS may announce the selection of Vendors on separate dates and/or enter into contracts on separate dates.

## **ARTICLE 2 ADMINISTRATIVE INFORMATION**

### **2.1 Inquiries**

Vendors are invited to submit written questions and requests for clarification regarding the RFP. Vendors must submit their questions or requests for clarifications via email with the subject line "RFP Question" anytime prior to the due date:

Karen Austin, Deputy Treasurer  
RFP Coordinator  
E-mail: karen.austin@iowa.gov

Oral questions will not be permitted. If the questions or requests for clarification pertain to a specific section of the RFP, the page and section number(s) must be referenced.

The TOS assumes no responsibility for verbal representations concerning conditions made by its officers or employees at any time, unless such representations are specifically incorporated into this RFP or written addenda to the RFP. Verbal discussions pertaining to modifications or clarifications of this RFP shall not be considered part of the RFP unless confirmed in writing by the RFP Coordinator. Any information provided by the Vendor verbally shall not be considered part of the Vendor's proposal. Only written communications from the Vendor and received by the RFP Coordinator will be accepted.

From the issue date of the RFP until announcement of the successful Vendor(s), Vendors may contact only the RFP Coordinator with regard to the RFP. The RFP Coordinator will respond only to questions regarding the procurement process and interpretation of the RFP. Vendors may be disqualified if they contact any state employee other than the RFP Coordinator.

### **2.2 Iowa Statutes and Rules**

The term and conditions of this RFP, any resulting contract, and any activities based upon this RFP shall be governed by and construed in accordance with the laws of Iowa.

### **2.3 Amendment to RFP, Amendment to Proposal and Withdrawal of Proposal**

The TOS reserves the right to amend the RFP at any time. Any amendments will be posted to the TOS website ([www.iowatreasurer.gov](http://www.iowatreasurer.gov)). The Vendor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of proposals, the TOS may, in its sole discretion, allow Vendors to amend their proposals in response to the TOS's amendment.

The Vendor may amend its proposal. The amendment must be in writing, signed by the Vendor and submitted via email by the Vendor in a timely manner so that it is received by the RFP Coordinator no later than the deadline set for the receipt of proposals.

Vendors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Vendors must notify the RFP Coordinator via email if they wish to withdraw their proposals.

Modifications to and resubmissions of any proposal must be in writing, signed by the Vendor, and submitted via email by the Vendor so that it is received by the RFP Coordinator no later than the deadline set for the receipt for proposals.

## **2.4 Costs of Preparing the Proposal**

The costs of preparation and delivery of the proposal are solely the responsibility of the Vendor. The TOS is not responsible for any costs, expenses, or losses incurred by any Vendor in connection with this RFP.

## **2.5 Rejection of Proposals**

The TOS reserves the right to reject any or all proposals or any portion thereof without penalty or liability at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the TOS to select a Vendor or to execute a binding contract with any Vendor that may be selected as a result of this RFP. The TOS further reserves the right to cancel this RFP, to issue a new RFP, to award a contract in whole or in part, or to perform any or all of the services described in this RFP if it is in the best interests of the State. In addition, the TOS may terminate or suspend contract negotiations with any selected Vendor at any time without penalty or liability. This RFP process is for the TOS's benefit and is intended to provide the TOS with competitive information to assist in the selection of one or more Vendors to provide services. It is not intended to be comprehensive and each Vendor is responsible for determining all factors necessary for submission of a comprehensive proposal.

## **2.6 Disqualification**

The TOS may reject outright and not evaluate proposals for any one of the following reasons:

- The Vendor fails to deliver the proposal by the due date and time.
- The Vendor's response materially changes a requirement, term, condition, or specification of this RFP or any attachment thereto.
- The Vendor's response limits the rights of the TOS or the State.
- The Vendor fails to include information necessary to substantiate that it will be able to meet a requirement of this RFP.
- The Vendor fails to respond to the TOS's request for information, documents, or references.
- The Vendor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in section 3 of this RFP.
- The Vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- The Vendor contacts any state employee other than the RFP Coordinator in violation of Section 2.1.
- The Vendor provides misleading, inaccurate, or unbalanced responses.
- The Vendor's proposal is not compliant with the requirements of this RFP.

## **2.7 Nonmaterial and Material Variances**

The TOS reserves the right to waive or permit cure of nonmaterial variances in the proposal if, in the judgment of the TOS, it is in the State's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other Vendors; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the TOS waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the Vendor from full compliance with RFP specifications or other contract requirements if the Vendor is ultimately selected. The determination of materiality is in the sole discretion of the TOS.

## **2.8 Reference Checks**

The TOS reserves the right to contact any reference to assist in the evaluation of the proposal, to verify information contained in the proposal and to discuss the Vendor's qualifications and the qualifications of any subcontractor identified in the proposal.

## **2.9 Information from Other Sources**

The TOS reserves the right to obtain and consider information from other sources concerning a Vendor, such as the Vendor's capability, financial strength and performance under other contracts.

## **2.10 Verification of Proposal Contents**

The content of a proposal submitted by a Vendor is subject to verification. Misleading or inaccurate responses may result in disqualification.

## **2.11 Criminal History and Background Investigation**

The TOS reserves the right to conduct criminal history and other background investigation of the Vendor, its officers, directors, subcontractors, shareholders, or partners and managerial and supervisory personnel retained by the Vendor for the performance of the contract.

## **2.12 Proposal Clarification Process**

The TOS reserves the right to contact a Vendor at any time after the submission of proposals for the purpose of clarifying a proposal or to ensure mutual understanding. The TOS will not consider information received if the information materially alters the content of the proposal or alters the type of goods and services the Vendor is offering to the State. An individual authorized to legally bind the Vendor shall sign responses to any request for clarification. Vendors shall submit responses to the RFP Coordinator within the time specified in the TOS's request. Failure to comply with requests for additional information may result in rejection of the proposal as non-compliant.

## **2.13 Disposition of Proposals**

All proposals become the property of the TOS and shall not be returned to the Vendor unless all proposals are rejected or the RFP is cancelled. At the conclusion of the selection process, the contents of all proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

## **2.14 Public Records and Requests for Confidential Treatment**

The TOS shall treat all information submitted by a Vendor as public information following the conclusion of the selection process unless the Vendor properly requests that information be treated as confidential at the time of submitting the proposal. The TOS's release of information is governed by Iowa Code Chapter 22. Vendors are encouraged to familiarize themselves with Chapter 22 before submitting a proposal. The TOS will copy, disclose and permit examination of public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the Vendor's proposal. In addition, the Vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law, which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. Pricing information cannot be considered confidential information. The request for confidential treatment of information must also include the name, address, email address, and telephone number of the person authorized by the Vendor to respond to any inquiries by the TOS concerning the confidential status of the materials.

Any proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire proposal as confidential may be deemed non-responsive and disqualify the Vendor.

If the Vendor designates any portion of the RFP as confidential, the Vendor must submit one copy marked "Public Copy" of the proposal from which the confidential information has been excised. This excised copy is in addition to the copy requested in Section 3.2 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the proposal as possible.

In the event the TOS receives a request for information marked confidential, written notice shall be given to the Vendor seven calendar days prior to the release of the information to allow the Vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code. The TOS will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.

The Vendor's failure to request confidential treatment of material will be deemed by the TOS as a waiver of any right to confidentiality, which the Vendor may have had.

## **2.15 Reproduction of Proposals**

By submitting a proposal, the Vendor agrees that the TOS may copy the proposal for purposes of facilitating the evaluation of the proposal or to respond to requests for public records. The Vendor consents to such copying and use by submitting a proposal and represents and warrants that such copying and use will not violate the rights of any third party. The TOS shall have the right to use ideas or adaptations of ideas that are presented in the proposals.

## **2.16 Release of Claims**

By submitting a proposal, the Vendor agrees that it will not bring any claim or cause of action against the State based on any misunderstanding concerning the information provided herein or concerning the TOS's failure, negligent or otherwise, to provide the Vendor with pertinent information as intended by this RFP.

## **2.17 Evaluation of Proposals Submitted**

Proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 3.3 of the RFP. The TOS will not necessarily select the Vendor(s) offering the lowest cost to the State. Instead, the TOS intends to select the compliant Vendor(s) whose proposal provides the State with the best value.

## **2.18 Notice of Selection and Acceptance Period**

Notice of intent to negotiate a contract will be sent by e-mail to all Vendors submitting a timely proposal.

## **2.19 Definition of Contract**

The full execution of a separate written contract shall constitute the making of a contract for services, and no Vendor shall acquire any legal or equitable rights relative to the goods or services to be provided in connection with this RFP until a separate written contract, with terms and conditions acceptable to the TOS, has been fully executed by the TOS and the successful Vendor(s). By submitting a proposal, each Vendor acknowledges that any selection of a successful Vendor(s) by the TOS under this RFP, including, without limitation, any verbal or written notice thereof provided by or on behalf of the TOS, shall not create any contractual rights or other obligations between the State and the successful Vendor until a separate, written contract with terms and conditions acceptable to the TOS has been executed by the TOS and the successful Vendor.

## **2.20 Choice of Law and Forum**

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this RFP and any resulting contract without regard to the choice of law provisions of Iowa law. Changes in applicable laws and rules may affect the award process or any resulting contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP or any resulting contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if

jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the State.

## **2.21 Restrictions on Gifts and Activities**

Iowa Code Chapter 68B restricts gifts which may be given or received by state officers and employees and requires certain individuals to disclose information concerning their activities with state government. Vendors are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

## **2.22 No Minimum Guaranteed**

The TOS anticipates that the selected Vendor(s), if any, will provide services as requested by the TOS. The TOS does not and will not guarantee any minimum usage of the Vendor's services or any minimum compensation to be paid under any contract resulting from this RFP. In addition, the TOS makes no guarantee that it will select a Vendor(s) as a result of this RFP, or execute a contract.

## **2.23 Agreement Not Exclusive**

Any agreement resulting from this RFP shall not be an exclusive agreement between the parties, and the State/TOS is entitled to enter into similar agreements or arrangements with any other party.

## **2.24 Attachments and Appendices are Part of RFP**

Any attachment, appendix, schedule, table or exhibit that is referred to herein or attached hereto shall be deemed incorporated herein by reference and shall constitute a part of this RFP.

## **2.25 Transition for Existing Vendors**

Vendors already performing for the TOS services described in this RFP will be required to complete any audits or collections that are uncompleted as of the effective date of a new contract under the terms and conditions of the new contract. The pre-existing contract will be deemed superseded by any new contract.

## **ARTICLE 3 PROPOSAL INFORMATION**

### **3.1 Format**

The bid proposal shall be an Adobe PDF document using 8.5" x 11" paper size.

The following documents and responses shall be included in the bid proposal in the order given below:

- **Transmittal letter on Vendor letterhead.**  
An individual authorized to legally bind the Vendor shall sign the transmittal letter. The letter shall include the Vendor's mailing address, electronic mail address, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to the TOS about the confidential nature of the information.
- **Information requested in Article 5 of this RFP.**  
Please restate each item followed by your response.
- **A signed "Bid Compliance and Certification Form" on Vendor letterhead.**  
This form can be found in Attachment 1. An individual authorized to legally bind the Vendor must sign the "Bid Compliance and Certification Form."
- **A signed "Authorization to Release Information Form" on Vendor letterhead.**  
This form can be found in Attachment 2. An individual authorized to legally bind the Vendor must sign the "Authorization to Release Information Form."
- **A signed "Certification Regarding Debarment, Suspension, and Eligibility, and Voluntary Exclusion Form" on Vendor letterhead.**  
This form can be found in Attachment 3. An individual authorized to legally bind the Vendor must sign the "Authorization to Release Information Form."

### **3.2 Submission of Proposal**

The bid proposal shall be an attachment to an e-mail with the subject line "RFP Unclaimed Property Auditing and Collection" sent to:

Karen Austin  
Office of Treasurer of State  
E-mail: karen.austin@iowa.gov

The Vendor must submit its proposal no later than 3:00 p.m. Central Time, October 26, 2012. This is a mandatory requirement and will not be waived. Any proposal received by the RFP Coordinator after this deadline will be rejected and returned unopened to the Vendor. It is the



Vendors responsibility to ensure that the proposal is received by the RFP Coordinator prior to the deadline. Vendors must furnish all information necessary to evaluate the proposal. Proposals that fail to meet the mandatory requirements of the RFP will be disqualified.

If the Vendor designates any information in its proposal as confidential pursuant to Section 2.14 of this RFP, the Vendor must also submit one (1) electronic copy of the proposal from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the proposal as possible.

### **3.3 Evaluation of Proposals**

The evaluation process is designed to select the Vendor(s) with the best combination of attributes to perform the required services and not necessarily the Vendor(s) of least cost. The TOS will use an evaluation committee to review and evaluate the proposals. The committee will consider all information provided in the proposal when making its recommendation to the Treasurer and may consider relevant information from other sources.

The proposals will remain confidential until the evaluation committee has reviewed all of the proposals submitted in response to this RFP and the Treasurer has announced a notice of intent to negotiate a contract with any selected Vendor. The evaluation process shall consist of the following steps:

- Step 1: Proposal Format Review.

Members of the TOS staff will review proposals to assess and verify compliance with the requirements of this RFP. The TOS reserves the right to waive minor variances at the sole discretion of the TOS.

- Step 2: Evaluation.

The evaluation committee will evaluate all compliant proposals that have advanced through Step 1 and make an award recommendation to the Treasurer based on the Evaluation Committee's perceived value of services offered by the Vendor, including proposed services that are above and beyond those required by this RFP. In making this determination, the Evaluation Committee will take into account:

- A) Vendor Background, Assigned Staff Experience, and Qualifications (40%)
- B) Ability to Perform Expected Service (40%)
- C) Fees (20%)
- D) Financial Stability (will be evaluated on a pass/fail basis).

- Step 3: Finalist Interviews

Vendors may be required to make a presentation of the bid proposal. The presentation, if necessary, will occur at the offices of the TOS. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the TOS. The TOS reserves the right to limit presentations to a specific Vendor or Vendors.

- Step 4: Recommendation.

The evaluation committee will make a recommendation to the Treasurer.

- Step 5: Decision.

The Treasurer has full discretion to select a Vendor(s) to provide Unclaimed Auditing and Collection Services. The Treasurer is not bound by the recommendation and may select a Vendor(s) that was not recommended by the evaluation committee, or he may reject all Vendors.

## ARTICLE 4 CONTRACT INFORMATION

### 4.1 Contract Terms and Conditions

The contract(s) that the TOS expects to award as a result of this RFP will be based upon the proposal submitted by the successful Vendor(s) and this solicitation. The contract(s) between the TOS and any Vendor(s) selected by the TOS shall be a combination of the specifications, terms and conditions of the RFP, the Unclaimed Property Auditing Services Agreement contained in Appendix A, the offer of the Vendor contained in the Vendor's proposal (excluding any exceptions taken by Vendor in accordance with this Section 4.1 that are not acceptable to the TOS), written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the TOS. The TOS reserves the right to either award a contract without further negotiation with any successful Vendor(s) or to negotiate contract terms with any selected Vendor(s) if the best interest of the State would be served.

The contract terms and conditions contained in Appendix A are not intended to be a complete listing of all contract terms and conditions but are provided only to enable Vendors to better evaluate the costs associative with the RFP and the potential resulting contract. All costs associated with complying with these requirements should be included in any pricing quoted by the Vendor.

**By submitting a proposal, each Vendor acknowledges its acceptance of the terms, conditions, and requirements contained in this RFP, including those contained in Appendix A, without change except as otherwise expressly stated in its proposal. If a Vendor takes exception to any term, condition, requirement or other provision of this RFP (including Appendix A), it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to substitute in place of the excepted provision. If a Vendor takes exception to any term or condition contained in Appendix A, the Vendor must produce a redlined draft of such attachment, and such redlined draft(s) must clearly reflect all of Vendor's exceptions thereto and all alternative language or other changes that Vendor specifically proposes to make to such attachment. Exceptions and/or proposed changes that materially change the terms, conditions, specifications, or requirements of the RFP (including Appendix A) may be deemed non-responsive by the TOS, as determined in its sole discretion, resulting in possible disqualification of the Vendor's proposal. A Vendor's failure to state an exception to any term, condition, specification, requirement or other provision of this RFP (including Appendix A) and propose alternative language in accordance with this Section 4.1 may be deemed by the TOS to constitute Vendor's acceptance thereof. Any term, condition, provision, or requirement, to which a Vendor fails to take exception and propose changes in accordance with this Section 4.1 will not be subject to negotiation. A Vendor may not take exception to all of the provisions or terms contained in Appendix A. A Vendor may not state that it takes exception to any terms, conditions, requirements, or other provisions of the RFP (including those contained in Appendix A) to the extent any of the foregoing conflict with any terms or conditions contained in the Vendor's standard form contracts. A Vendor may not submit its standard form contract(s) for consideration in lieu of Appendix A. By submitting a proposal to this RFP, Vendors acknowledge and agree that the TOS and any successful Vendor will be negotiating from and utilizing Appendix A, and will not**

**be negotiating from or utilizing a Vendor's standard form contracts. The TOS reserves the right to refuse to enter into a contract with the successful Vendor for any reason, even after delivery of notice of selection or intent to negotiate a contract. The TOS further reserves the right to negotiate contract terms with the successful Vendor(s).**

## **4.2 Duration**

The initial term of the Agreement will be from the date of a signed contract through June 30, 2014, unless terminated earlier in accordance with the terms of the Agreement. After expiration of the initial term, the Treasurer shall have the option to extend/renew the Agreement for up to three additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Treasurer and may be exercised by the Treasurer by providing written notice to any Vendor(s).

## **ARTICLE 5 QUESTIONNAIRE**

**[PLEASE RESTATE THE QUESTIONS IN YOUR RESPONSE]**

### **5.1 Vendor Background**

- A. Provide an overview of your firm. This includes the form of company ownership (sole proprietor, partnership, etc), and the address of all individuals possessing an ownership interest (publicly traded entities need only provide the name and address of all *individuals* possessing a five percent (5%) or greater ownership interest).
- B. Name, address, telephone number, and e-mail address of the firm including all dba's or assumed names or other operating names of the firm.
- C. Identify and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the firm's performance under the terms of this RFP.
- D. Provide preceding two years and year to date (a) balance statement and (b) profit and loss statement.

### **5.2 Experience**

- A. Number of years performing unclaimed property auditing and collection services.
- B. A schedule of states for which the firm has provided unclaimed property auditing and collection services. Include the years engaged as agent for each state. Include any terminated state contracts and the reasons for termination.
- C. Describe the level of technical experience in providing the types of services sought by the RFP.
- D. Provide the number of unclaimed property audits completed and closed (findings collected) for each of the preceding three (3) calendar years. Include the gross amounts collected and delivered to the states.
- E. Provide the number of new unclaimed property audits initiated (open conference held or records obtained) for each of the preceding three (3) calendar years.
- F. Provide the number of unclaimed property audits commenced more than three (3) years ago that have not been completed. Indicate the reason(s) for untimely completion.
- G. List all current client states, and provide a contact person and telephone number for each reference.
- H. Disclose, in conjunction with providing the types of services contemplated by this RFP, any alleged or actual contract breaches, security breaches, civil or criminal litigation, or official investigations. Provide status if pending, or outcome if concluded.

### **5.3 Personnel**

- A. Provide information for all key personnel who will be involved in providing the services contemplated by this RFP. The following information must be included:
  - Full name.
  - Education and professional licensure.
  - Years of experience and employment history particularly as it relates to the scope of services specified herein.
- B. For all subcontractors utilized by the firm (including but not limited to a custodian), the firm must identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.

### **5.4 Operations**

- A. Provide an organizational chart of the firm's operation, and explain workflows and management oversight.
- B. Describe in detail the processes for the handling of Property collections. Include information concerning the segregation, accounting, and safeguarding of Property. Indicate the frequency with which a complete reconciliation of all Property held pending distribution to the states is undertaken.
- C. When were your last operational reviews or audits performed, including state contractor examinations, SSAE, SAS 70, or related external quality control reviews? List the company that provided the review/audit and the date.
- D. Provide a summary of your IT functions, data security policies and procedures, and disclose any security breaches that have occurred during the preceding 24 months.
- E. Explain the methods for receiving and transmitting data (both hard copy and electronic) between Holders and the Vendor. Include a description of protections utilized to insure that the confidentiality of data is safeguarded.
- F. Provide a summary of all audit and procedural manuals and materials utilized in performing unclaimed property examinations.
- G. Provide one or more reports of findings for a general ledger examination. The identity of the Holder and other confidential information may be redacted.
- H. Provide a summary of internal procedures that demonstrate the adequacy of controls.
- I. Explain your methodology for identifying audit candidates and determining that audit targets are not currently in compliance with unclaimed property reporting requirements.

## 5.6 Additional Questions

- A. Disclose any contracts or counterparty relationships that could be perceived to conflict or potentially conflict with performing unclaimed property auditing and collection services for the TOS. Potential conflicts of interest include, but are not limited to, providing reporting unclaimed property reporting services to Holders for a fee, or performing location efforts for lost owners. Provide an explanation why such contracts or counterparty relationships do not constitute a conflict of interest.
- B. Please discuss your view of the legal trends (statutory enactments, federal regulation, redesign of commercial transactions, etc.) in unclaimed property and their impact on owner rights and future unclaimed property collections. What suggestions would you have for states to either counter (or, as appropriate, embrace) these trends?
- C. Are you a corporate affiliate member of the National Association of State Treasurers and/or the National Association of Unclaimed Property Administrators? If "yes," please describe the ways in which you have participated in and supported the organization.
- D. What is your view of the role of litigation in securing unclaimed property compliance?
- E. Discuss creative approaches that you have undertaken to encourage Holder cooperation and expediting the timeframe for performing audits.
- F. Where it appears that a Holder has not retained name and address records, what steps do you undertake to ensure that (a) no name and address records in fact exist and (b) that the Holder, on a prospective basis, will retain name and address records?
- G. When it is necessary for an estimation to be performed, what methodologies and specific expertise do you utilize?
- H. What is the role of technology in performing unclaimed property audits, and in what innovative ways in your work have you leveraged technology?
- I. How do you believe that your firm is perceived by the Holder community?
- J. Would you consider your auditing approach and techniques as conservative or aggressive?
- K. How do you stage your examinations so as to ensure minimal disruption for Holders?
- L. The TOS is interested in providing flexibility to all Vendors in their responses to this RFP. Provide any additional comments or information relevant to your proposal that has not already been included in your responses to the preceding questions.

## **5.7 Pricing**

Provide your cost proposal for the proposed services as prescribed in Appendix C. All compensation to be paid for the services described in the RFP is contingent on the collection and delivery of billable unclaimed property. State the fee as a percentage of the net Property collected and delivered to the TOS. This fee percentage must be all-inclusive; the TOS will not compensate Vendors in excess of the contingent fee percentage, and there is no reimbursement for cost or expenses. Although there is no maximum fee percentage that a Vendor may propose, note that in order to promote equity the TOS will require that Vendors charge the State of Iowa no greater fee percentage than the lowest contingent fee percentage charged by the Vendor to any other state in auditing a specific Holder. The TOS reserves the right to negotiate pricing with any Vendor prior to the award of a contract.



## Attachment #1

Date

Karen Austin  
State Treasurer's Office  
Des Moines, Iowa 50319

Re: Request for Proposal for Unclaimed Property Auditing and Collection  
Bid Compliance and Certification Form

Dear Ms. Austin:

1. I certify that I have the authority to bind the Vendor to the specific terms and conditions and technical specifications required in this RFP and offered in the Vendor's proposal. Offer will be valid for 90 days from the date of submission.
2. I understand that by submitting this proposal the Vendor agrees to provide services, which meet the requirements of this RFP, and to provide the services at the prices quoted by the Vendor in the proposal.
3. I certify that in making this proposal that the Vendor has not consulted with others for the purpose of restricting competition. No attempt has been made or will be made by the Vendor to induce any other Vendor to submit or not to submit a proposal for the purpose of restricting competition.
4. I certify that the information contained in the proposal is true and accurately portrays all aspects of the Vendor's ability to provide the services described in the RFP. The Vendor has not made any knowingly false statements in its proposal.
5. I am aware that any substantive misinformation or misrepresentation may disqualify the proposal from further consideration.
6. I certify that the proposal has been developed independently, without consultation, communication or agreement with any employee of the State who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee. No relationship exists or will exist during the contract period between the Vendor and the State that interferes with fair competition or as a conflict of interest.
7. Unless otherwise required by law, the information found in this proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the award of the contract, directly or indirectly, to any other vendor.
8. I certify total compliance with all terms, conditions and specifications of this RFP (including Appendix A) except as specifically stated here (additional pages may be attached):

<u>RFP Page</u>	<u>Section</u>	<u>Exceptions</u>
-----------------	----------------	-------------------

Sincerely,

---

Name and Title of Authorized Representative

---

Date

## Attachment #2

Date

Karen Austin  
State Treasurer's Office  
Des Moines, Iowa 50319

Re: Request for Proposal for Unclaimed Property Auditing and Collection  
Authorization to Release Information Form

Dear Ms. Austin:

**[Name of Vendor]** hereby authorizes the TOS to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Vendor in response to the Request for Proposal for Unclaimed Property Auditing and Collection. The Vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the TOS or may otherwise hurt its reputation or operations. The Vendor is willing to take that risk. The Vendor hereby releases, acquits and forever discharges the State of Iowa, the Treasurer, all officers, directors, employees and agents thereof from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the TOS in the evaluation and selection of a successful Vendor in response to the Request for Proposal. The Vendor authorizes representatives of the TOS to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's proposal submitted in response to the Request for Proposal. The Vendor further authorizes any and all persons, entities to provide information, data, and opinions with regard to the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform, the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references supplied to the TOS in the evaluation and selection of a successful Vendor in response to the Request for Proposal. A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

---

Name and Title of Authorized Representative

---

Date

**Attachment #3**

Date

Karen Austin  
State Treasurer's Office  
Des Moines, Iowa 50319

Re: Request for Proposal for Unclaimed Property Auditing and Collection  
Certification Regarding Debarment, Suspension, Eligibility, and Voluntary Exclusion

Dear Ms. Austin:

By submitting a proposal in response to the RFP for Unclaimed Property Auditing and Collection, the undersigned certifies the following:

1. I certify that, to the best of my knowledge, (Name of Firm) and all of its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or agency; (b) have not within a three year period preceding this proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause.

2. This certification is a material representation of fact upon which the TOS has relied upon when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available, the TOS may pursue available remedies including suspension, debarment, or termination of the contract.

Sincerely,

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Date

## APPENDIX A

### UNCLAIMED PROPERTY AUDITING SERVICES AGREEMENT

This Agreement for Unclaimed Property Auditing Services (this "Agreement"), made and effective on [redacted], by and between the State of Iowa (the "State"), acting by and through the Treasurer of the State of Iowa (the "Treasurer") and [name of audit firm] (the "Auditor"). The parties agree as follows:

#### Section 1. Identity of the Parties.

- 1.1** The Treasurer is responsible for the administration of unclaimed property pursuant to Iowa Code Chapter 556. The Treasurer's duties include the examination of records of persons and entities that may be holders of property ("Holders") that is required to be reported pursuant to Iowa Chapter 556 and 781 Iowa Admin. Code 9 . The Treasurer's address is Unclaimed Property Audit Desk, Treasurer of State, 321 E 12<sup>th</sup> Street, Des Moines, Iowa 50319.
- 1.2** Auditor is a [limited liability partnership, corporation, etc.] located at [address of auditor].

**Section 2. Purpose.** The parties have entered into this Agreement for the purpose of retaining the Auditor to provide unclaimed property auditing services for the Treasurer, as more fully described herein.

**Section 3. Incorporation.** The Treasurer's Request for Proposal for Auditing Services dated [date] ("RFP") and the Auditor's proposal in response thereto dated [date] ("Proposal"), excluding any exceptions taken by Auditor with respect to any of the terms, conditions, requirements, or provisions of the RFP, including any contract forms attached thereto ("Auditor Exceptions"), together with any clarifications, amendments, attachments, or addenda or other writings of the Treasurer are incorporated into this Agreement by this reference as if fully set forth in this Agreement. The terms and conditions of the RFP and the Auditor's Proposal (excluding any Auditor Exceptions) are made contractual obligations of the Auditor.

**3.1 Order of Precedence.** In the case of any inconsistency or conflict between the specific provisions of this Agreement, the RFP and the Proposal by Auditor to the RFP, any inconsistency or conflict shall be resolved by giving preference as follows:

- 3.1.1** First to the specific provisions of this Agreement and the attachments hereto;
- 3.1.2** Second to the specific provisions of the RFP, as supplemented by the Treasurer's Questions and Responses dated [date];
- 3.1.3** Third, to the specific provisions of the Proposal, excluding any Auditor Exceptions.
- 3.2 Conflicting Language.** In the event of a conflict of language among any of these components, terms and conditions set forth and/or referenced in this Agreement shall prevail over conflicting terms and conditions contained in the earlier documents, in their original form or as amended.

The terms and conditions of each component listed above will take precedent over each subsequent component. The Treasurer reserves the right to clarify any contractual relationship in

writing, with the concurrence of the Auditor, and such clarifications shall govern in case of conflict between the Agreement components.

- 3.3 No Inconsistency.** The reference to the parties' obligations, which are contained in this Agreement, are intended to change, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the specific terms of the RFP or to the Proposal in this Agreement, shall not be construed as creating a conflict with this Agreement and will not relieve the Auditor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal that exceed the requirements of the RFP shall not be construed as creating an inconsistency or conflict with the RFP or this Agreement. The contractual obligations of the Treasurer cannot be implied from the Proposal to the RFP.

#### **Section 4. Scope of Work.**

- 4.1 Scope of Services.** The services and deliverables to be provided by the Auditor pursuant to this Agreement are set forth in Exhibit A.
- 4.2 Amendments to Scope of Services and Specifications.** The parties agree that Exhibit A, Scope of Services, may be revised, replaced, amended or deleted at any time during the term of this Agreement to reflect changes in service upon the mutual written consent of the parties.

#### **Section 5. Compensation.**

- 5.1 Pricing.** In consideration of Auditor providing the Treasurer with the services and deliverables in accordance with the terms and conditions of this Agreement, Auditor shall be entitled to receive the fees or other compensation as specified in Exhibit B, subject to all terms, conditions and limitations of this Agreement. The Treasurer shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Auditor in connection with this Agreement or any Scope of Services, unless otherwise agreed by the Treasurer in writing.
- 5.2 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Auditor shall be responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, training, conferences, insurance, utilities, telephone, start-up costs, and all other costs and expenses of the Auditor.
- 5.3 Invoices.** The Auditor shall submit detailed invoices to the Treasurer on a monthly basis requesting payment of the fees or other compensation specified in Exhibit B (to be added after RFP acceptance). The invoices shall be submitted to the Treasurer with appropriate documentation as specified in Exhibit B (to be added after RFP acceptance). All invoices submitted by Auditor shall comply with all applicable state laws, rules and procedures and shall contain all information reasonably requested by the Treasurer. If an invoice contains an error or impropriety and/or it is not a proper invoice as described in this section, the Treasurer will notify the Auditor of the improper invoice within 15 business days after the Treasurer's receipt thereof. The Treasurer's notice will provide a description of the error or impropriety and any additional information necessary to correct the error or impropriety. The Auditor shall submit the corrected invoice to the Treasurer within thirty days of the date of the Treasurer's notice, unless the Treasurer grants an extension. Treasurer reserves the right to audit all invoices for accuracy.

The Auditor shall not charge a fee to the State for filing a Holder report, remitting property, or reporting property to the State for any company, subsidiary, or parent company of the Auditor that would be obligated to report or remit property to the State. The Auditor shall not charge a fee to the State for conducting an examination, filing a Holder report, remitting property, or reporting property in which the Auditor or an affiliate of the Auditor has a separate agreement to process a particular Holder's unclaimed property reports for the category of property to be examined.

- 5.4 Payment.** The Treasurer shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Treasurer may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Treasurer shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Treasurer believes the invoice is inaccurate or incorrect in any way. The Treasurer's obligation to make any payment under this Agreement shall be subject to and limited by all applicable laws, rules, regulations and procedures. The Treasurer shall make no advance payments to Auditor for any services or deliverables provided by Auditor pursuant to this Agreement. In addition to pursuing any other remedy provided herein or by law, the Treasurer may withhold compensation or payments to Auditor, in whole or in part, without penalty or liability to the Treasurer or the State in the event the Treasurer reasonably determines that Auditor has failed to satisfactorily perform any of its duties or obligations as set forth in this Agreement. No interest shall accrue or be paid to Auditor on any compensation or other amounts withheld or retained by the Treasurer under this Agreement.
- 5.5 Set-off Against Sums Owed by Auditor.** In the event that the Auditor owes the Treasurer or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Treasurer may set off the sum owed to the Treasurer or the State against any sum invoiced to the Treasurer by the Auditor in the Treasurer's sole discretion unless otherwise required by law. Any such sum or amounts due to the Treasurer or the State may be deducted by the Treasurer without a judgment or any court action from any money or sum payable to the Auditor pursuant to this Agreement or any other agreement between Auditor and the Treasurer or the State.
- 5.6 Erroneous Payments and Credits.** Auditor shall promptly pay or refund to the Treasurer the full amount of any overpayment or erroneous payment within thirty (30) business days after either discovery by the Auditor or notification by the Treasurer of the overpayment or erroneous payment. In the event Auditor fails to timely pay or refund any amounts due the Treasurer under this paragraph, the Treasurer may charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Treasurer may, in his sole discretion, elect to have Auditor apply any amounts due to the Treasurer under this paragraph against any amounts payable to Auditor under this Agreement.
- 5.7 Monitoring and Review.** The Treasurer may monitor and review Auditor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring may include the Treasurer's assessment of invoices and reports furnished by Auditor pursuant to this Agreement.

## **Section 6. Term.**

The initial term of this Agreement is from [REDACTED], through June 30, 2014, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Treasurer shall have the option to extend/renew this Agreement for up to three additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Treasurer and may be exercised by the Treasurer by providing written notice to Auditor.

## **Section 7. Other Duties.**

- 7.1 Background Investigation.** Upon request by the Treasurer, the Auditor shall require its directors, officers and employees (and the directors, officers and employees of any subcontractors approved by Treasurer) to authorize background investigations and to complete background disclosure forms as may be required by the Treasurer. The Auditor shall bear all costs associated with the background investigation.
- 7.2 Conflicts of Interest.** Auditor shall ensure that each director, officer and/or employee of Auditor or any approved subcontractor performing services pursuant to this Agreement shall have no real or perceived conflicts of interest at any time during the term and any renewal term of this Agreement which could adversely affect, in the Treasurer's sole judgment, the Auditor's performance under this Agreement. Auditor represents and warrants that each of the above-described persons does not have any direct or indirect personal interest in, or relationship, business arrangement or agreement with, other individuals or entities which is incompatible with or in conflict with the discharge or performance of Auditor's duties and responsibilities under this Agreement. Any such person who acquires any incompatible or conflicting personal interest, on or after the effective date of this Agreement, shall immediately disclose his or her interest to the Treasurer in writing. Thereafter, he or she shall not participate in any action affecting the work to be performed under this Agreement unless the Treasurer determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
- 7.3 Instructions.** The Treasurer may, from time to time as it deems appropriate, communicate specific instructions and requests to the Auditor concerning the performance of the work described in this Agreement. The Auditor shall comply with such instructions and requests to the satisfaction of the Treasurer. The parties expressly understand that these instructions and requests are for the sole purpose of ensuring the satisfactory completion of the work described in this Agreement. The Auditor is responsible for satisfactory completion of work as indicated in this Agreement and shall make every effort to correct any deficiencies and complete each assigned task or work.
- 7.4 Liability.** Notwithstanding any language herein to the contrary, the Auditor shall be liable for any personal injury or damage to property, caused by the fault or negligence of the Auditor, its officers, directors, employees, agents and approved contractors. In no event shall the State or Treasurer be liable for injuries suffered by Auditor, or Auditor's employees, related to the work performed under this Agreement.

## **Section 8. Auditor Representations, Warranties and Covenants.**

All warranties made by the Auditor in all provisions of this Agreement and the Proposal by the Auditor, whether or not this Agreement specifically denominates the Auditor's promise as a warranty or whether the warranty is created only by the Auditor's affirmation or promise, or is created by a description of the materials and services to be provided, shall not be construed as limiting or negating any warranty

provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand warranties applicable to the services provided by the Auditor.

- 8.1** The Auditor represents warrants and covenants that all employees, partners or other personnel assigned to the Treasurer's account will be qualified by experience and education to provide the services required by this Agreement.
- 8.2** The Auditor represents, warrants, and covenants that services provided by the Auditor shall be independent and impartial, of the highest quality and shall be performed in a manner consistent with the highest standards in the Auditor's profession.
- 8.3** The Auditor represents, warrants, and covenants that it has the right to enter into and fully perform this Agreement upon the terms and conditions specified herein and that it has not granted and will not grant any right or interest to any person or entity which might derogate, encumber, or interfere with its performance or the rights granted to the State or the Treasurer.
- 8.4** The Auditor represents, warrants, and covenants that Auditor and its principals (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency; (b) have not within a three year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with commission of any of the offenses enumerated in (b); and (d) have not within a three year period preceding this Proposal had one or more contracts with a public entity (Federal, state, or local) terminated for cause or default.
- 8.5** The Auditor represents, warrants, and covenants that, in the performance of this Agreement, Auditor's work product and the information, data, designs, processes, inventions, techniques, devices, and other such intellectual property furnished, used, or relied upon by Auditor will not infringe any copyright, patent, trademark, trade dress, or other intellectual property right of Auditor or any third party. Auditor shall inform the Treasurer in writing, in advance, if Auditor's performance, furnishing, use, or reliance could reasonably be deemed to infringe any patent, copyright, trademark, trade dress, or other such intellectual property right of Auditor or any third party.
- 8.6** The Auditor represents, warrants, and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.
- 8.7** The Auditor represents, warrants, and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
- 8.8** Auditor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Treasurer.



## **Section 9. Indemnification.**

- 9.1** Auditor and its successors and permitted assigns shall indemnify and hold harmless the Treasurer, the State and their employees, officers, board members, agents, representatives, and officials (Indemnitees) from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:
- 9.1.1** Any violation or breach of any term or condition of this Agreement by or on behalf of Auditor, including, the furnishing or making by Auditor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; or
  - 9.1.2** Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Auditor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or
  - 9.1.3** Auditor's performance or attempted performance of this Agreement; or
  - 9.1.4** Failure by Auditor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, and federal laws, rules, ordinances and regulations; or
  - 9.1.5** Any failure by Auditor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Auditor to conduct business in the State;
  - 9.1.6** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; or
  - 9.1.7** Any claim for violation or infringement of any statutory or common law rights or any other rights of any person or entity, including, without limitation, any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security.
- 9.2** Auditor's obligations under this Section 9 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.
- 9.3** Auditor shall be liable for any personal injury or damage to property caused by the fault or negligence of Auditor, its officers, directors, employees, agents and approved contractors or subcontractors.
- 9.4** Auditor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Treasurer or any other Indemnitee.

## **Section 10. Default and Termination.**

- 10.1 Termination for Cause.** The State or Treasurer may terminate this Agreement upon written notice for the breach by the Auditor of any material term, condition, or provision of this Agreement, if such breach is not cured within the time period specified in the notice of breach or any subsequent notice or correspondence delivered by the State or the Treasurer to the Auditor. In addition, the State or the Treasurer may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:
- 10.1.2** Auditor furnished any statement, representation, warranty or certification in connection with this Agreement, the Proposal or the RFP which is materially false, deceptive, incorrect or incomplete;
  - 10.1.3** Auditor or any of Auditor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance or bad faith;
  - 10.1.4** The State or Treasurer determines that satisfactory performance of this Agreement is substantially endangered or that a default is likely to occur;
  - 10.1.5** Auditor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws;
  - 10.1.6** Auditor terminates or suspends its business;
  - 10.1.7** The State or Treasurer reasonably believes that Auditor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
  - 10.1.8** Auditor has failed to comply with applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement; or
  - 10.1.9** Auditor has engaged in conduct that has or may expose the State or the Treasurer to liability, as determined in the Treasurer's sole discretion.

The Treasurer's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Treasurer, and the Treasurer shall be entitled to exercise any other rights and remedies, in law, at equity, or otherwise.

## **10.2 Termination for Convenience.**

Following thirty (30) days written notice, the State or Treasurer may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation or liability to the Auditor. Termination for convenience may be for any reason or no reason at all.

## **10.3 TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW.**

**10.3.1 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, AND SUBJECT TO THE LIMITATIONS SET FORTH BELOW, THE TREASURER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT WITHOUT PENALTY OR LIABILITY AND WITHOUT ANY ADVANCE NOTICE AS A RESULT OF ANY OF THE FOLLOWING:**

- 10.3.2** The legislature or governor fail in the sole opinion of the Treasurer to appropriate funds sufficient to allow the Treasurer to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or
- 10.3.3** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Treasurer to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Treasurer in the Treasurer's sole discretion; or

- 10.3.4** If the Treasurer's authorization to conduct its business is withdrawn or there is a material alteration in the programs the Treasurer administers, including, without limitation, the Division of Unclaimed Property; or
- 10.3.5** If Treasurer's duties, programs or responsibilities are modified or altered; or
- 10.3.6** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Treasurer's ability to fulfill any of its obligations under this Agreement or the operation of the Unclaimed Property Division.

The Treasurer shall provide the Auditor with written notice of termination pursuant to this section.

**10.4 Remedies of Auditor in Event of Termination by the State or Treasurer.** In the event of termination of this Agreement for any reason by the Treasurer (except for termination by the Treasurer pursuant to Section 10.1), the Treasurer shall pay only those amounts, if any, due and owing to the Auditor for services actually rendered up to and including the date of termination of the Agreement and for which the Treasurer is obligated to pay pursuant to this Agreement; provided however, that in the event the Treasurer terminates this Agreement pursuant to Section 10.3, the Treasurer's obligation to pay Auditor such amounts shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Auditor's claim. This provision in no way limits the remedies available to the State or the Treasurer in the event of the termination under this Agreement. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Treasurer and shall not be construed to require the Treasurer to pay any compensation or other amounts hereunder in the event of Auditor's breach of this Agreement or any amounts withheld by the Auditor in accordance with the terms of this Agreement. The State and the Treasurer shall not be liable under any circumstances for any of the following:

- 10.4.1** The payment of unemployment compensation to Auditor's employees;
- 10.4.2** The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 10.4.3** Any costs incurred by Auditor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;
- 10.4.4** Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;
- 10.4.5** Any taxes Auditor may owe that in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**10.5 Auditor's Termination Duties.** Upon request of the Treasurer, the Auditor shall:

- 10.5.1** Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work under the Agreement, including, without limitation, results accomplished, conclusions resulting there from, and such other matters as the Treasurer may require.
- 10.5.2** Immediately cease using and return to the State any personal property or materials, whether tangible or intangible, provided by the Treasurer to the Auditor.
- 10.5.3** Comply with the Treasurer's instructions for the timely transfer of any active files and work product produced by the Auditor under this Agreement.
- 10.5.4** Immediately return to the Treasurer any payments made by the Treasurer for services that were not rendered by the Auditor.
- 10.5.5** Comply with any other request or instruction of Treasurer related to this Agreement or the transition of the Auditor's duties to a successor auditor.

**10.6 Care of Property.** The Auditor shall be responsible for the proper custody and care of any State-owned property furnished for the Auditor's use in connection with the performance of the Agreement, and

the Auditor will reimburse the State for any loss or damage to such property caused by the Auditor, or any subcontractor employed by Auditor, normal wear and tear excepted.

**10.7 Termination for Cause by Auditor.** Auditor may only terminate this Agreement upon written notice for the breach by the Treasurer of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the Treasurer's receipt of Auditor's written notice of breach.

## **SECTION 11. INSURANCE.**

**11.1 INSURANCE POLICIES.** AUDITOR SHALL, AT ITS SOLE EXPENSE, MAINTAIN IN FULL FORCE AND EFFECT, WITH INSURANCE COMPANIES ADMITTED TO DO BUSINESS IN THE STATE OF IOWA AND ACCEPTABLE TO THE TREASURER, INSURANCE COVERING ITS WORK OF THE TYPE AND IN AMOUNTS REQUIRED BY THIS AGREEMENT. AUDITOR'S INSURANCE SHALL, AMONG OTHER THINGS, INSURE AGAINST ANY LOSS OR DAMAGE RESULTING FROM OR RELATED TO AUDITOR'S PERFORMANCE OF THIS AGREEMENT REGARDLESS OF THE DATE THE CLAIM IS FILED OR EXPIRATION OF THE POLICY. ALL INSURANCE POLICIES REQUIRED BY THIS AGREEMENT SHALL: (I) BE SUBJECT TO THE APPROVAL OF THE TREASURER; (II) REMAIN IN FULL FORCE AND EFFECT FOR THE ENTIRE TERM OF THIS AGREEMENT; AND (III) NOT BE CANCELED, REDUCED OR CHANGED WITHOUT THE TREASURER'S PRIOR WRITTEN CONSENT. THE STATE OF IOWA AND THE TREASURER SHALL BE NAMED AS ADDITIONAL INSURED ON ALL SUCH POLICIES, AND ALL SUCH POLICIES SHALL INCLUDE THE FOLLOWING ENDORSEMENT: "IT IS HEREBY AGREED AND UNDERSTOOD THAT THE STATE OF IOWA AND THE TREASURER ARE NAMED AS ADDITIONAL INSURED, AND THAT THE COVERAGE AFFORDED TO THE STATE OF IOWA AND THE TREASURER UNDER THIS POLICY SHALL BE PRIMARY INSURANCE. IF THE STATE OF IOWA OR THE TREASURER HAVE OTHER INSURANCE WHICH IS APPLICABLE TO A LOSS, SUCH OTHER INSURANCE SHALL BE ON AN EXCESS, SECONDARY OR CONTINGENT BASIS. THE AMOUNT OF THE INSURER'S LIABILITY UNDER THIS POLICY SHALL NOT BE REDUCED BY THE EXISTENCE OF SUCH OTHER INSURANCE." NOTWITHSTANDING THE FOREGOING, THE REQUIREMENT THAT THE STATE OF IOWA AND THE TREASURER BE NAMED AS ADDITIONAL INSURED ON ALL POLICIES OF INSURANCE SHALL NOT APPLY TO AUDITOR'S WORKERS COMPENSATION INSURANCE.

**11.2 UNLESS OTHERWISE REQUESTED BY THE TREASURER, THE AUDITOR SHALL, AT ITS SOLE COST, CAUSE TO BE ISSUED AND MAINTAINED IN EFFECT DURING THE ENTIRE TERM OF THIS AGREEMENT NOT LESS THAN THE INSURANCE COVERAGE'S SET FORTH BELOW:**

<u>Type of Insurance</u>	<u>LIMIT</u>	<u>AMOUNT</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2
	Prod./Comp.	million
	Aggregate	\$1
	Personal injury	million
	Each Occurrence	\$1
		million
Excess Liability, umbrella form		\$1
	Each Occurrence	\$1

	Aggregate	million
		\$1
		million
Malpractice Insurance or Errors and Omissions Insurance	Each Occurrence	\$2
		million
Property Damage	Each Occurrence	\$1
	Aggregate	million
		\$1
		million
Workers Compensation and Employer Liability	As Required by Iowa law	

**11.3 Claims Provision.** All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

**11.4 Certificates of Coverage.** At the time of execution of this Agreement, Auditor shall deliver to the Treasurer certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Auditor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Auditor related to this Agreement, certifying that the State of Iowa and the Treasurer are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Treasurer. All certificates of insurance shall be subject to approval by the Treasurer.

**11.5 No Limitation of Liability.** Acceptance of the insurance certificates by Treasurer shall not act to relieve the Auditor of any obligation under this Agreement. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of the Auditor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Auditor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Auditor shall have no claim or other recourse against the State or the Treasurer for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Auditor. Notwithstanding any other provision of this Agreement, Auditor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.

**11.6 Warranty.** The Auditor warrants that it has examined its insurance coverage to determine whether the State and the Iowa Treasurer can be named as additional insureds without creating an adverse effect on the Auditor's coverage.

**11.7 Waiver of Subrogation Rights.** The Auditor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State or the Treasurer. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Treasurer.

**11.8 Filing of Claims.** In the event either the Treasurer or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Auditor shall, at the Treasurer's request, immediately file a proper claim under such policy. Auditor will provide the Treasurer with proof of filing of any such claim and keep the Treasurer fully informed about the status of the claim. In addition, Auditor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Treasurer and the State. Auditor shall pay to the Treasurer and the State any insurance proceeds or payments in receives in connection with any such claim immediately upon Auditor's receipt of such proceeds or payments.

**11.9 Proceeds.** In the event the Treasurer or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Auditor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Treasurer and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Auditor hereby assigns to the Treasurer and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

## **Section 12. Contract Administration.**

**12.1 Independent Contractor.** The Auditor is an independent contractor performing services for the Treasurer. The Auditor shall not hold itself out as an employee or agent of the Treasurer. The Treasurer shall not provide Auditor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Auditor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Auditor and its staff shall not be considered employees of the State or Treasurer for federal or state tax purposes. Treasurer shall not withhold taxes on behalf of Auditor, unless required by law. Auditor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement. Unless otherwise specifically provided for herein or in a writing signed by the Treasurer, the Auditor has no authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, the Treasurer or the State.

**12.2 Compliance with the Law and Regulations.** The Auditor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Auditor shall comply with any applicable reporting and compliance standards of the Iowa Department of Management regarding equal employment. Manager may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Auditor shall make the provisions of this section a part of its contracts with any subcontractors providing goods or services related to Manager's performance of this Agreement. The Auditor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Agreement. The Treasurer may consider the failure of the Auditor, or any of its employees, agents, affiliates, contractors of subcontractors, to comply with any law or regulation as a material breach of this Agreement.

**12.3 Confidentiality.** Auditor's employees and agents may have access to private, nonpublic or confidential information belonging to or maintained by the Treasurer or by Holders subject to examination by the Auditor to the extent necessary to carry out its responsibilities under the Agreement. The Auditor shall preserve the confidentiality of information disclosed by the Treasurer and Holders to Auditor and shall maintain procedures for safeguarding such information. Auditor must designate one individual who shall remain the responsible authority in charge of all information collected, used, or disseminated by Auditor in connection with the performance of the Agreement. Auditor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved subcontractors to ensure compliance with the terms of this Agreement. Any private or confidential data belonging to or maintained by the Treasurer shall remain the property of the Treasurer at all times. The Auditor shall comply with the requests of the Treasurer and Holders to maintain the confidentiality of their information, including, but not limited to, requests to execute nondisclosure agreements.

The Auditor shall not disclose or disseminate any private, nonpublic or confidential information received, collected, maintained, or used in the course of performance of the Agreement except as authorized by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Any information or data supplied to or created by Auditor shall be considered the property of the Treasurer. Auditor must agree to return any and all information collected, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of Treasurer. In the event that Auditor receives a request for access to any information, records or property of the Treasurer, Auditor shall immediately communicate such request to the Treasurer for consideration and handling, and shall comply with the Treasurer's instructions and requests with respect thereto.

Auditor shall indemnify the Treasurer and the State in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Treasurer may terminate this Agreement immediately without notice of default and opportunity to cure. The Auditor's obligations under this section shall survive expiration or termination of this Agreement.

**12.4 Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

**12.5 Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the Treasurer and the Auditor.

**12.6 Choice of Law and Forum.**

**12.6.1** This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof.

**12.6.2** Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Auditor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

**12.6.3** This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Treasurer or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise..

**12.6.4** Auditor irrevocably consents to service of process by certified or registered mail addressed to the Auditor's designated agent. The Auditor appoints [\_\_\_\_\_] as its agent to receive service of process. If for any reason the Auditor's agent for service is unable to act as such or the address of the agent changes, Auditor shall immediately appoint a new agent and provide the Treasurer with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Treasurer. Nothing in this provision will alter the right of the Treasurer to serve process in any other manner permitted by law.

**12.6.5** This Section 12.6 shall survive termination of this Agreement.

### **12.7 Assignment and Delegation.**

This Agreement may not be assigned, transferred or conveyed in whole or in part by Auditor without the prior written consent of the Treasurer. For purposes of construing this clause, a transfer of a controlling interest in Auditor, a merger, sale or consolidation of Auditor, or a sale of substantially all of Auditor's assets shall be considered an assignment. Auditor agrees that it shall provide the Treasurer with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Auditor and of any proposed merger, sale or consolidation of Auditor. Auditor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Auditor or any affiliate thereof without the prior written consent of the Treasurer.

### **12.8 Subcontractors or Agents.**

None of the services to be provided by Auditor pursuant to this Agreement shall be subcontracted or delegated to any third party or affiliate without the prior written consent of the Treasurer. The Treasurer's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Treasurer, whether financial or otherwise. Any subcontract to which the Treasurer has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Treasurer may deem necessary. Auditor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Auditor shall indemnify and hold harmless the Treasurer and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Auditor's breach of any subcontract into which it enters, including Auditor's failure to pay any and all amounts due to any subcontractor. In addition, the Treasurer is not responsible for any failure of any subcontractor to pay any amounts that may be due to Auditor, and Auditor may not refuse to perform its obligations under this Agreement for any such failure. All subcontracts shall contain provisions which allow the Treasurer to access the subcontractor's books, documents, and records and for inspections of work, as required of Treasurer herein. No subcontract or delegation of work shall relieve or discharge Auditor from any obligation, provision, or liability under this Agreement. Auditor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Auditor, would constitute a breach of this Agreement, shall be deemed a breach by Auditor and have the same legal effect.

### **12.9 Integration.**

This Agreement represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement.

### **12.10 Obligation Beyond Agreement Term.**

This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All continuing obligations of the Treasurer and the Auditor incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the termination or conclusion of this Agreement.

### **12.11 Supersedes Former Agreements.**

This Agreement supersedes all prior Agreements between the Treasurer and the Auditor for the goods and services provided in connection with this Agreement.

### **12.12 Waiver.**

Except as specifically provided for in a waiver signed by duly authorized representatives of the Treasurer and the Auditor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.



## **12.13 Notices.**

- 12.13.1** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the **Treasurer**:

***Treasurer State of Iowa***  
Attn: Karen Austin  
321 E 12<sup>th</sup> Street  
Des Moines IA 50319

If to the **Auditor**:

- 12.13.2** Each such notice shall be deemed to have been provided:
- 12.13.2.1** At the time it is actually received; or,
  - 12.13.2.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day of delivery; or,
  - 12.13.2.3** Within five days after deposited the U.S. Mail in the case of registered U.S. Mail.
  - 12.13.2.4** Copies of such notice to each party shall be provided separately.
- 12.13.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

## **12.14 Cumulative Rights.**

The various rights, powers, options, elections and remedies of the Treasurer and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Treasurer and the State by law, and shall in no way affect or impair the right of the Treasurer or the State to pursue any other contractual, equitable or legal remedy to which the Treasurer and the State may be entitled. The election by the Treasurer or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

## **12.15 Severability.**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

## **12.16 Time is of the Essence.**

Time is of the essence with respect to the Auditor's performance of its obligations under this Agreement. The Auditor shall ensure that all personnel providing services to the Treasurer are responsive to Treasurer requirements in all respects including Treasurer directives with respect to auditing services.

**12.17 Authorization.**

Auditor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Auditor, enforceable in accordance with its terms.

**12.18 Successors in Interest.**

All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

**12.19 Records Retention and Access.**

The Auditor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the Treasurer throughout the term of this Agreement for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. The Auditor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Auditor relating to orders, invoices, or payments or an other documentation or materials pertaining to this Agreement. Auditor shall not impose a charge for audit or examination of Auditor's books and records. The Auditor shall, for each approved subcontract in excess of \$2,500, require its subcontractors to agree to the same provisions of this section. Auditor agrees that if an appeal is made of the findings of an examination, Auditor shall cooperate with the Treasurer in the review of materials containing information relevant to the examination and resulting appeal.

**12.20 Headings or Captions.**

The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections.

**12.21 Multiple Counterparts.**

This agreement shall be executed in two or more counterparts, any one of which shall be an original without reference to the others.

**12.21 Not a Joint Venture.**

Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto.

**12.23 Additional Provisions.**

The parties agree that if an Addendum, Rider, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**12.24 Further Assurances and Corrective Instruments.**

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**12.25 Obligations of Joint Entities.**

If the Auditor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

## **12.26 Force Majeure.**

**12.26.1** Neither the Auditor nor the Treasurer shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure".

**12.26.2** As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of the Auditor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of the Auditor or any parent, subsidiary, affiliated or associated company of the Auditor or claims or court orders which restrict the Auditor's ability to deliver the goods or services contemplated by this Agreement.

**12.26.3** If a "force majeure" delays or prevents the Auditor's performance, the Auditor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the Treasurer.

## **12.27 Material Breaches.**

The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

## **12.28 Right of Inspection.**

The Auditor shall allow the Treasurer, or anyone designated by the Treasurer, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

## **12.29 Taxes.**

The Auditor shall be responsible for paying any taxes incurred by the Auditor in the performance of this Agreement. The Treasurer and the State are exempt from the payment of Iowa sales and other taxes.

## **12.30 Title to Property.**

Title to all property furnished by the Treasurer to the Auditor to facilitate the performance of this Agreement shall remain the sole property of the Treasurer and/or State.

## **12.31 Exclusivity.**

This Agreement is not exclusive. During the term of this Agreement, the Treasurer may obtain auditing services from other auditing firms.

## **12.32 Rights in Work Product.**

The Auditor hereby assigns, transfers, conveys all information, documents and materials (collectively, "Work Papers") prepared and created by the Auditor for or in connection with this Agreement to the Treasurer. All Work Papers shall become the property of the Treasurer and shall be made available, upon request, to the Treasurer or its representatives for review, inspection, and, if desired, reproduction. The Treasurer shall have an unrestricted right to reproduce, distribute, modify, maintain and use the Work Papers. The Auditor shall not obtain copyright or other proprietary protection for the Work Papers, and the Auditor relinquishes any and all copyrights, privileges, and other proprietary rights to the Work Papers. All such Work Papers shall be retained for at least seven years after the termination or expiration

of this Agreement. Auditor may retain copies of Work Papers in accordance with the requirements of the Auditor's professional standards provided that Auditor complies with the requirements and provisions of Section 12.3 with respect to any and all confidential information contained in such copies and Work Papers.

### **12.33 Award of Related Agreements.**

The Treasurer may undertake or award supplemental or successor agreements for work related to this Agreement. Auditor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Treasurer or the State in connection with this Agreement. Auditor will ensure that any of its contractors or subcontractors that have been approved by the Treasurer will abide by this provision.

### **12.34 Sovereign Immunity.**

The Treasurer and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

### **12.35 Disclaimer.**

All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Treasurer at the time the above-cited documents were prepared. The Treasurer does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

### **12.36 Notification of Events.**

Auditor shall notify the Treasurer in writing if any of the following has been engaged in by or occurred with respect to Auditor or any corporation, shareholder or entity having or owning a controlling interest in Auditor:

- 12.36.1** Auditor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or
- 12.36.2** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or
- 12.36.3** Making an assignment for the benefit of creditors; or
- 12.36.4** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Auditor's performance of its obligations under this Agreement; or
- 12.36.5** An order is entered approving an involuntary petition to reorganize the business of Auditor for all or part of its property; or
- 12.36.6** If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Auditor is issued by any court or administrative agency against all or any material portion of Auditor's property; or
- 12.36.7** Taking any action to authorize any of the foregoing.

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

**State of Iowa, acting by and through its Treasurer**

*[Auditor]*

By: \_\_\_\_\_

Name: Michael L. Fitzgerald

Title: Treasurer of State

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### SCOPE OF SERVICES

#### ***Identification and Collection of Property***

Auditor shall undertake to identify and collect all types of Property from Holders that have never reported or have improperly reported to the State of Iowa, or otherwise have in their possession Property that is subject to the Act.

Although the Treasurer may, on occasion, request that the Auditor examine a particular Holder of unclaimed property, the Auditor shall be responsible for researching, identifying, and proposing audit candidates. In proposing audit candidates to the Treasurer for consideration, the Auditor shall adequately demonstrate the Auditor's reason to believe that the audit candidate is not in compliance with the Act. The Treasurer, in his sole discretion, shall determine whether an audit should be undertaken on behalf of the Treasurer, and no audit shall be conducted absent the written authorization of the Treasurer.

The Treasurer has the final and sole authority to decide who, if anyone will represent the Treasurer in the event more than one Auditor or another state wants to identify and collect unclaimed property from the same Holder.

The Treasurer may approve or disapprove authorization to attempt to identify and locate unclaimed property from any Holder without offering justification for such denial. The Treasurer may also, after authorization has been granted to conduct an audit of a Holder, suspend or terminate the examination on behalf of the state regardless of whether it has commenced, for any reason, including legislative or judicial action which causes delay that prevents performance, or an unforeseen or uncontrollable event, and without offering justification for such suspension or termination.

The Auditor shall identify and collect property in a *timely* manner. The Treasurer reserves the right not to compensate the Auditor if the Auditor delivers property to the Treasurer more than 18 months after the Treasurer authorized the audit.

Under this service, the Auditor shall:

- Identify Holders or potential Holders of property that is reportable to Iowa under the Act;
- Audit the records of Holders or potential Holders to identify with specificity the unclaimed property that should be reported and delivered to the state. Performance of the examination will be undertaken in a manner consistent with Iowa Administrative Code 781-910, 781-915 and Appendix B of this contract;
- Advise Holders that all property reported and remitted must conform to Iowa reporting requirements;
- Prepare and submit to the Treasurer reports of property in accordance with the requirements of the Act and any regulations hereunder;
- Direct Holders and their agents to deliver to the Auditor's custodian, property deemed owing under the Act;
- Cause the property to be forwarded to the Treasurer or the Treasurer designee; and
- Upon completion of the audit, advise the Holder that future reports of unclaimed property must be filed directly with the Treasurer.

#### ***Enforcement Efforts***

If a Holder refuses to report and deliver unclaimed property, the Auditor shall advise the Treasurer of the Holder's refusal within 30 days of the date the Auditor is advised by the Holder of such refusal.

If the Holder has failed to retain the names and addresses of owners with respect to property for which names and addresses are typically documented and retained, the Auditor shall apprise the Holder in

writing of the requirement to record and prospectively maintain name and address information. The Auditor shall additionally, within 30 days of notifying a Holder of the requirement to record and prospectively maintain name and address information, notify the State of the Holder's failure to retain name and address information.

### ***Conflicts of Interest***

The Unclaimed Property Agent shall maintain independence in mental attitude in accordance with AICPA Professional Standards AU Section 220. The Auditor(s) should not only be independent in fact but should avoid situations that may lead others to doubt their independence.

### ***Auditor Reports and Accountability***

The Auditor shall provide the Treasurer a monthly Work in Progress report that identifies all audits in process, sets forth the FEIN of the Holder, and details the status of all work. The content and format of the Work In Progress report must substantially comply with Treasurer specifications. The Auditor shall also provide the Treasurer with such other status reports as are requested. Status reports will be submitted timely, in the format requested by the Treasurer.

The Auditor shall undergo a SSAE 16 (Type I and Type II) review by an independent auditing vendor within 24 months of the effective date of the contract. The Auditor shall provide the State with a copy of the report within 30 days of the report's issuance.

All records, data and other information obtained by the Auditor from Holders shall be deemed to constitute the property of the Treasurer. The Auditor agrees to produce any such records requested by the Treasurer.

The Treasurer reserves the right to review all records maintained by the Auditor to ensure the Auditor's compliance with all terms and conditions of the Treasurer contract with the Auditor. The Auditor shall maintain all records for a period of seven (7) years following termination of the contract with the Treasurer.

The Auditor shall properly document the audits that it performs on behalf of the Treasurer and make audit working papers available for review on the request of the Treasurer. Such working papers will include but not be limited to planning information, findings, calculations, analysis, and summarization.

The Auditor shall hold all information obtained in the course of an audit as confidential, and shall take affirmative steps to ensure that all employees and subcontractors take adequate steps to ensure the confidentiality of information.

The Auditor shall act in the best interest of the Treasurer.

### ***Holder Due Diligence & Subsequent Reporting***

The Auditor shall advise each Holder in writing of the provisions of the Act for notifying owners of their property.

Where it is subsequently established that the Holder failed to perform due diligence on property identified in an audit, the Auditor shall refund the Treasurer all fees paid by the Treasurer to the Auditor in conjunction with the audit, provided that the Treasurer did not, prior to the completion of the audit, waive due diligence requirements.

The Auditor, upon completion of the initial review or examination of a Holder's records, must instruct the Holder to file all future reports directly with the Treasurer.

### ***Unclaimed Property Report***

The Auditor shall provide reports of the property to be forwarded to the Treasurer in a format prescribed by the Treasurer. The Treasurer will provide reporting instructions, and specifications needed for electronic reporting.

Reports will include (if available) the following information, and such additional information as proscribed by administrative rule:

- Holder name
- Holder address
- a Holder contact, familiar with the records processed and the property transferred
- Federal Employer Identification number of the Holder
- owners/beneficiaries names
- owners/beneficiaries last known addresses
- owners/beneficiaries social security numbers or Federal Tax Identification numbers
- types of property
- any unique property identifier or number used by the Holder (for example, an account number or a birth date)
- amount of the property
- CUSIP number, and certificate numbers for any securities, if applicable
- bond numbers and coupon numbers accompanied with call date, if applicable
- value of the shares and the valuation date
- description of any securities, including maturity dates, interest rates, and interest or dividends due, if applicable
- date of the last transaction with the owner with respect to the property

### ***Custody of Property***

The Auditor shall enter into an agreement with a custodian to provide these services for the Auditor.

The custodian shall:

- Segregate into a separate account or accounts all property delivered by Holders.
- Acknowledge that the Treasurer has all rights of a third party beneficiary with respect to all funds due the state and maintained by the custodian on behalf of the Auditor.

The custodian is required to receive delivery of all property. In the event that the Auditor inadvertently received delivery of property, the Auditor shall forward the property to the custodian within 24 hours of the Auditor's receipt; however, property remittances of \$250,000 or more from a single owner must be transmitted directly to the Treasurer by the Holder, or if received by the Auditor or the Custodian, to the Treasurer within 24 hours of receipt.

The Auditor shall advise the Holder that the Holder is responsible for paying all claims up to the time that both a final report has been agreed to and the Holder has delivered the property to the Auditor.

Neither the Auditor nor its custodian, shall pledge, assign, hypothecate or otherwise encumber property without the prior written consent of the Treasurer, nor shall the Auditor take any ownership position in any securities constituting property.

The Auditor shall pay the Treasurer interest on any cash balances received and held by the Auditor or the Custodian for more than 45 days. Interest shall be calculated from the date of receipt, utilizing the 3 month Fed funds rate.



### ***Delivery of Property***

The Auditor shall reconcile the report with the Holder and deliver all property with the reconciled report to the Treasurer within 45 days from receipt of any property by the custodian.

Except for securities that are required to be certificated or are non-transferable, all securities must be electronically transferred directly from the Holder or the Holder's transfer agent, to a designated custodial account maintained by the Treasurer. Certificates for securities not eligible for book entry registration must be registered as instructed by the Treasurer. Those certificates that cannot be transferred must be delivered to the Treasurer in the nominee or original owner's name.

The original date that certificates are registered in the name of the Treasurer or the Treasurer nominee name, or credited in book entry form, must be retained, and must become a part of all reports relating to such certificates.

A complete delivery of property consists of the following:

- Unclaimed Property Report.
- Unclaimed Property Report remittance in the form of cash or securities (may contain stock certificates, mutual fund statements, dividend reinvestment statement, or a combination of each).
- A confirmation of each securities transaction either by a physical certificate, electronic transfer form or a statement indicating the transfer to the Treasurer.
- Summary of all stock or mutual funds delivered which include the name, the CUSIP and the total number of shares by issue.
- Each Holder delivery and invoice shall be separate and distinct, and not reported or comingled with deliveries for other Holders.

### ***Performance Review***

In accordance with Iowa Code Section 8.47, the Auditor shall, upon each anniversary date of the contract, undertake a self-assessment of the Auditor's services and performance and provide a copy of the review to the Treasurer. The review shall include, but not necessarily be limited to:

- The total amount of unclaimed property successfully collected by the Auditor.
- Audits commenced and audits completed during the review period.
- Assessment of the Auditor's financial stability and control environment.
- Services provided by the Auditor beyond those contractually required.
- Achievements made by the Auditor in encouraging and maintaining compliance.

If the Auditor's service and performance is found to be unsatisfactory the Treasurer may, in his sole discretion, terminate the contract.

## APPENDIX B EXAMINATION PROTOCOLS

The processing of the books and records of Holders of unclaimed property and the demand for delivery of reportable property shall be made pursuant to the following procedures:

A. The holdings of the U.S. Supreme Court in *Texas v. New Jersey* (85 S.Ct. 1136), *Pennsylvania v. New York* (92 S.Ct. 2880), and *Delaware v. New York* (113 S.Ct. 1550) and any applicable federal legislation regarding which state has the right to escheat the property shall be followed.

- Where the name and last known address of the apparent owner according to the books and records of the Holder is in the State of Iowa, it shall be deemed reportable to the State of Iowa.
- Where a person other than the insured or annuitant is entitled to funds and no address of such person is known to the Holder or if it is not definite and certain from the records of the Holder what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is Iowa, where the last the same as the last known address of the insured or annuitant according to the records of the Holder is in Iowa.
- If the Holder otherwise has no records whatsoever (as confirmed by a diligent examination by the Vendor) setting forth the name and last known address of the apparent owner, the property shall be deemed reportable to the state of domicile of the Holder.
- An address shall be deemed to mean a description of location reasonably sufficient for the delivery and receipt of mail.
- Where the address of the apparent owner cannot be readily ascertained but in fact exists in the books and records of the Holder, sampling techniques will be used to allocate the property among the states participating in the examination being conducted by the Vendor.
- If the amount of reportable unclaimed property cannot be ascertained from the books and records of the Holder, statistical estimation techniques may be used for such periods.

B. Pursuant to Iowa Administrative Code 781-9.15, contract auditors shall adhere to the following guidelines in performing examinations on behalf of the Office of the State Treasurer of Iowa:

- Contract auditors shall comply with all terms and conditions specified in the contract with the Treasurer.
- Contract auditors shall not subcontract any work without prior written authorization from the Treasurer. The contract auditors are responsible for ensuring that any subcontractors used during an examination possess sufficient training and experience to adequately perform the unclaimed property examination and agree to comply with all terms and conditions of the contract auditor's contract with the Treasurer.
- Contract auditors shall possess an ability to examine the records of entities holding various types of unclaimed property.
- Contract auditors shall have security procedures in place to ensure that all unclaimed property examination reports and working papers are secure.
- Contract auditors shall have the ability to evaluate and comment on the Holder's procedures and accounting systems related to capturing unclaimed property for present and future reporting periods.
- In all matters relating to an examination assignment, independence in mental attitude is to be maintained.
- Contract auditors shall not engage in any examination without written consent from the Treasurer.
- Contract auditors shall not participate in examinations in which such participation could be construed or perceived as a conflict of interest. Should the contract auditor believe that it could not conduct an assigned examination due to a conflict of interest or for any other reason; the contract auditor shall notify the Treasurer. The Treasurer shall then determine whether recusal of

the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the examination of a Holder, another contract auditor shall be assigned.

- Contract auditors shall maintain strict confidentiality of any nonpublic records or documents gathered during the course of an examination in accordance with their contract.
- Contract auditors shall properly document their review and make their working papers gathered during examinations available on demand for review by the Treasurer and the Attorney General's Office.
- Upon request, the contract auditors shall provide the Holder with relevant copies of working papers supporting any calculation made of unclaimed property reportable and deliverable to the Treasurer.
- Contract auditors shall maintain working papers for a minimum of five years following the completion of the examination assignment, the delivery of unclaimed property, the resolution of any appeal, or the finality of judgment in any litigation, whichever is later.
- Contract auditors should conduct examinations consistent with the Act and other applicable law, policies of the Treasurer, generally accepted accounting principles, generally accepted auditing standards, and any relevant examination rules promulgated pursuant to the Act as they relate to the reporting and delivery of unclaimed property from Holders or persons.

## APPENDIX C COMPENSATION GUIDELINES

The Auditor shall be paid a sum equal to [\_\_\_\_% percentage] of the value of the net abandoned property (as defined below) actually paid or delivered to the Treasurer and included in a Holder's initial report and next succeeding report. Such contingent fee shall be the sole and exclusive compensation payable to the Auditor, and the State shall not be responsible for the Auditor's expenses incurred in the Auditor's performance of services.

Where the Auditor has charged another state a contingent fee that is less than the contractual percentage to be charged to the State by the Auditor in conjunction with the Auditor's audit of a particular Holder, the Auditor agrees that it shall reduce the fee percentage otherwise payable by this State to an amount equal to the lower fee percentage. In the event that the Auditor, subsequent to the delivery of property to and collection of a fee from this State, charges another state a contingent fee that is less than the contractual percentage paid by the State in conjunction with the audit of a particular Holder, the Auditor agrees to credit this State with the difference in fees between the contingent fee paid by the State and the lower fee percentage.

Net abandoned property shall be determined as follows:

- The gross value of all abandoned property collected through the efforts of the Contractor, reduced by the following:
- The value of all abandoned property collected from the Holder, if any, which otherwise would have been delivered pursuant to the reporting practices of the Holder at the time of the Auditor's commencement of the audit of the Holder;
- The value of any Property collected from a Holder where the Holder is domiciled in Iowa, unless the records of the Property are maintained in a location outside of Iowa.
- The value of any Property which at the time of collection is not past due, unless the collection from the same Holder also includes Property which is past due.
- The value of any Property collected in conjunction with an audit that was not duly approved by the Treasurer.
- The value of any Property collected that is received by the Treasurer more than 18 months after the Treasurer authorized the audit, unless the Treasurer has provided the Auditor with an audit extension in writing.

The Auditor agrees that it will not charge the Treasurer a collection fee where Holder has paid the Auditor a fee for reporting unclaimed property.

The Auditor agrees that it will not pay a fee to a Holder for the Holder's agreement to utilize the Auditor.

The Auditor shall not bill the Treasurer, and the Treasurer shall not be obligated to compensate the Auditor, until such time as the Auditor has satisfied all the report delivery requirements as provided for in Section 1.3 Scope of Service.

The value of unclaimed property, other than cash, shall be the closing price of any security traded on an exchange on the date the property is received by the Auditor's custodian. If the Property is a security traded over-the-counter, the value will be equal to the bid price on the date the Property is received by the Auditor's custodian. For any other property, the value shall be determined according to generally accepted valuation procedures.

Exhibit A of this contract notwithstanding, the Auditor may, at the time of proposing the audit of a Holder domiciled in the State of Iowa, and where the records may be maintained within Iowa, request in writing to be compensated for performing the audit. The Treasurer may, at his sole discretion, agree to compensate the Auditor either the full contractual fee, a reduced fee, or no fee for conducting such audit.

The Auditor shall submit to the Treasurer a statement of the fees calculated as provided herein in the form of an invoice for each separate audit conducted by the Auditor. The invoice shall include the Federal tax identification number or Social Security number of the Auditor and the following statement: "In submitting this invoice, the Auditor attests that all property for which the Auditor seeks compensation constitutes net abandoned property as defined in the Auditor's contract with the State of Iowa." Invoices for each audit shall be separate and distinct, and not reported or comingled with deliveries for other Holders.

If the Auditor is unable to obtain access to a Holder's record, or secure the collection of findings, and legal action by the Iowa Department of Justice is required to obtain compliance, the Treasurer reserves the right to reduce the contingency fee otherwise owing to the Auditor for property that is ultimately collected. The Treasurer shall take into account the relative effort and expense required of the Auditor and the Iowa Department of Justice in determining the appropriate level of compensation for the Auditor.